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4 **UNITED STATES DISTRICT COURT**
5 **DISTRICT OF NEVADA**

6 * * *

7 BLANCA M. HERNANDEZ-AGUIRRE,

8 Plaintiff,

9 v.

10 NANCY A. BERRYHILL, Acting
11 Commissioner of Social Security
Administration,

12 Defendant.

Case No. 2:18-cv-00006-RFB-EJY

ORDER

13
14 **I. INTRODUCTION**

15 Before the Court is Plaintiff Blanca M. Hernandez-Aguirre's Motion for Remand, ECF No.
16 18, and Defendant Nancy A. Berryhill's Cross-Motion to Affirm, ECF No. 21.

17 For the reasons discussed below, the Court finds that the ALJ's opinion is not supported
18 by substantial evidence and contains legal error that is not harmless. Therefore, the Court grants
19 Plaintiff's motion and remands to Defendant for an award of benefits.

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21 **II. BACKGROUND**

22 On November 26, 2013, Plaintiff completed an application for disability insurance benefits
23 alleging disability since September 14, 2013. AR 27. Plaintiff was denied initially on June 2,
24 2014 and upon administrative reconsideration on May 1, 2015. AR 27. Plaintiff requested a
25 hearing before an Administrative Law Judge ("ALJ") and appeared on August 25, 2016 with the
26 assistance of a Spanish language interpreter. AR 27, AR 50–57. In an opinion dated October 18,
27 2016, ALJ Cynthia R. Hoover found Plaintiff not disabled. AR 27–43. The Appeals Council

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1 denied Plaintiff's request for review on October 27, 2017, rendering the ALJ's decision final. AR
2 1–6.

3 The ALJ followed the five-step sequential evaluation process for
4 determining Social Security disability claims set forth at 20 C.F.R. § 404.1520(a)(4). At step one,
5 that ALJ found that Plaintiff has not engaged in substantial gainful activity since his alleged onset
6 date of September 14, 2013. AR 28. At step two, the ALJ found that Plaintiff has the following
7 impairments which were severe in combination: mild degenerative disc disease of the cervical
8 spine, depressive disorder, anxiety disorder, and Human Immunodeficiency Virus (“HIV”). AR
9 28–29. At step three, the ALJ found that Plaintiff's impairments do not meet or medically equal a
10 listed impairment. AR 29–32.

11 The ALJ found that Plaintiff has the residual functional capacity (“RFC”) to perform
12 medium work as defined in 20 CFR 404.1567(c). He found that Plaintiff can lift and carry no
13 more than twenty-five pounds frequently and fifty pounds occasionally; she can sit for six hours,
14 cumulatively, in an eight-hour workday; she can stand and/or walk for six hours, cumulatively, in
15 an eight-hour workday; and she is relegated to the performance of simple, repetitive tasks
16 characteristic of the unskilled occupational base. AR 32–42. Based on this RFC, the ALJ found
17 at step four that Plaintiff is capable of performing her past relevant work as a house cleaner. AR
18 42–43.

19 20 **III. LEGAL STANDARD**

21 42 U.S.C. § 405(g) provides for judicial review of the Commissioner's disability
22 determinations and authorizes district courts to enter “a judgment affirming, modifying, or
23 reversing the decision of the Commissioner of Social Security, with or without remanding the
24 cause for a rehearing.” In undertaking that review, an ALJ's “disability determination should be
25 upheld unless it contains legal error or is not supported by substantial evidence.” Garrison v.
26 Colvin, 759 F.3d 995, 1009 (9th Cir. 2014) (citation omitted). “Substantial evidence means more
27 than a mere scintilla, but less than a preponderance; it is such relevant evidence as a reasonable
28

1 person might accept as adequate to support a conclusion.” Id. (quoting Lingenfelter v. Astrue, 504
2 F.3d 1028, 1035 (9th Cir. 2007)) (quotation marks omitted).

3 “If the evidence can reasonably support either affirming or reversing a decision, [a
4 reviewing court] may not substitute [its] judgment for that of the Commissioner.” Lingenfelter,
5 504 F.3d at 1035. Nevertheless, the Court may not simply affirm by selecting a subset of the
6 evidence supporting the ALJ’s conclusion, nor can the Court affirm on a ground on which the ALJ
7 did not rely. Garrison, 759 F.3d at 1009–10. Rather, the Court must “review the administrative
8 record as a whole, weighing both the evidence that supports and that which detracts from the ALJ’s
9 conclusion,” to determine whether that conclusion is supported by substantial evidence. Andrews
10 v. Shalala, 53 F.3d 1035, 1039 (9th Cir. 1995). “The ALJ is responsible for determining
11 credibility, resolving conflicts in medical testimony, and for resolving ambiguities.” Id.

12 The Social Security Act has established a five-step sequential evaluation procedure for
13 determining Social Security disability claims. See 20 C.F.R. § 404.1520(a)(4); Garrison, 759 F.3d
14 at 1010. “The burden of proof is on the claimant at steps one through four, but shifts to the
15 Commissioner at step five.” Garrison, 759 F.3d at 1011. Here, the ALJ resolved Plaintiff’s claim
16 at step four.

17 18 **IV. DISCUSSION**

19 **A. New Medical Evidence**

20 Plaintiff argues that the Appeals Council erred in declining to consider Plaintiff’s
21 additional evidence. In support of Plaintiff’s appeal, Plaintiff submitted additional medical records
22 from Serenity Mental Health for the period of December 9, 2015 through January 26, 2017. AR
23 2, 58–68. The Appeals Council determined that the evidence did not show a reasonable probability
24 of changing the outcome of the case, and therefore the Appeals Council did not consider or exhibit
25 the new evidence. AR 2.

26 The additional medical records substantiate Plaintiff’s claims of disabling mental
27 impairments. The records document Plaintiff’s ongoing depression, panic attacks, PTSD, and
28 severe anxiety. AR 58–68. On July 7, 2016, treating psychiatrist Michael Mall, M.D. opined that

1 Plaintiff “is not capable of living independently” and “needs constant supervision.” AR 64. Dr.
2 Mall certified that, in his opinion, Plaintiff requires formal legal guardianship pursuant to Nevada
3 statutory law. AR 64–65.

4 Following an ALJ hearing, a Court may incorporate new evidence into the record “only
5 upon a showing that there is new evidence which is material and that there is good cause for the
6 failure to incorporate such evidence into the record in a prior proceeding.” 42 U.S.C. § 405(g).
7 To be material, new evidence must bear “directly and substantially on the matter in dispute,” and
8 the plaintiff must demonstrate “a ‘reasonable possibility’ that the new evidence would have
9 changed the outcome of the administrative hearing.” Mayes v. Massanari, 276 F.3d 453, 461–62
10 (9th Cir. 2001) (quoting Ward v. Schweiker, 686 F.2d 762, 764 (9th Cir. 1982) & Booz v. Secretary
11 of Health & Human Servs., 734 F.2d 1378, 1380–81 (9th Cir. 1983)).

12 The Court finds that the additional medical records from Serenity Mental Health are
13 material and that there is good cause for Plaintiff’s failure to incorporate them earlier in the
14 proceedings. These records document ongoing treatment for Plaintiff’s anxiety, AR 58–68, which
15 she testified to being the reason she cannot work, AR 52. It is reasonably possible that the new
16 evidence would have changed the outcome of the administrative hearing because the Certificate
17 of Incapacity and Regarding the Need for Guardianship completed by Dr. Mall directly
18 undermines the ALJ’s conclusion that there was a lack of evidence in the record “to establish a
19 medically required need [for Plaintiff] to be accompanied at all times by her husband.” AR 42.
20 The good cause prong of the standard is “liberally applied, where, as in the present case, there is
21 no indication that a remand for consideration of new evidence will result in prejudice to the
22 Secretary.” Embrey v. Bowen, 849 F.2d 418, 423 (9th Cir. 1988) (quoting Burton v. Heckler, 724
23 F.2d 1415, 1417–18 (9th Cir.1984)). The new records in part post-date the hearing and the Court
24 finds no prejudice to Defendant, as Defendant has had a chance to respond to the new evidence
25 before this Court and the Court finds no need to remand for additional proceedings, as discussed
26 below.

27 **B. Plaintiff’s Testimony**

28 Plaintiff argues that the ALJ erroneously rejected her testimony. The ALJ found that

1 Plaintiff's "impairments could reasonably be expected to cause some symptoms," but that "the
2 intensity she alleged, and their impact on her functioning, were not supported by the totality of
3 evidence." AR 42. As the ALJ did not find evidence of malingering, the ALJ may only reject
4 Plaintiff's testimony regarding the severity of her symptoms with specific, clear, and convincing
5 reasons. Garrison, 759 F.3d at 1014–15. "The clear and convincing standard is the most
6 demanding required in Social Security cases." Id. at 1015 (quoting Moore v. Comm'r of Soc. Sec.
7 Admin., 278 F.3d 920, 924 (9th Cir. 2002)). The ALJ must identify with specificity "what
8 testimony is not credible and what evidence undermines the claimant's complaints." Lester v.
9 Chater, 81 F.3d 821, 834 (9th Cir. 1995), as amended (Apr. 9, 1996). As of March 2016, the Social
10 Security Administration has eliminated the use of the term "credibility" from its policy, as
11 "subjective symptom evaluation is not an examination of an individual's character." SSR 16-3p.
12 However, ALJs may continue to consider the consistency of a claimant's statements compared to
13 other statements by the claimant and to the overall evidence of record. Id.

14 The Court finds in this case that the ALJ plainly made a credibility determination contrary
15 to the policy change reflected by SSR 16-3p. The ALJ gave numerous reasons for discounting
16 Plaintiff's testimony. First, the ALJ noted that while Plaintiff alleged significant pain, the spinal
17 imaging records showed no acute abnormality, the progress notes reflected greatly unremarkable
18 clinical exams, and her spinal and myalgia conditions required nothing more than conservative
19 treatment. AR 29, 42. The ALJ found that Plaintiff "did not submit records from a single doctor
20 that substantiated her allegations regarding the severity of her back/neck/bodily pain or other
21 alleged impairments." AR 42. The ALJ therefore concluded that Plaintiff is "largely
22 asymptomatic." AR 29. Second, the ALJ suggested that Plaintiff was insincere in representing
23 that she did not receive some treatment due to lack of insurance and poverty. Specifically, the ALJ
24 wrote that Plaintiff "said she attempted suicide one month ago, but she did not go to the hospital,
25 due to a lack of insurance. However, she offered no explanation as to why she did not use gratuitous
26 local care or care under the Affordable Care Act." AR 32. The ALJ further observed that "Primary
27 care notes in June 2016 reflected that the claimant's co-pay amount was \$0.00 for her office visit,
28 contrary to her testimony that she could not afford \$45.00 co-payments to attend counseling

1 sessions.” AR 35–36. Third, the ALJ found that Plaintiff was at least sporadically noncompliant
2 with her antiretroviral medication. AR 33, 34, 35, 42. Fourth, the ALJ suggested that Plaintiff
3 had lied about why she stopped working: “She reportedly had panic attacks most of her life (worse
4 over the past year), but had worked for years despite them. She, however, said that she stopped
5 working, due to them, contrary to her statement to the consultative examiner (Exhibit SF) that she
6 had stopped working in April 2014.” AR 36, see also AR 42 (noting that Plaintiff’s complaints
7 are contradicted by her reported work activity after the alleged onset date). Fifth, the ALJ seemed
8 to find that Plaintiff lied about her activities of daily living: “In activities of daily living, the
9 claimant had no convincing restriction. . . . [A]llegedly limited daily activities could not be
10 objectively verified with any reasonable degree of certainty.” AR 39–40. The ALJ further noted
11 that there was “no clinical evidence of muscle wasting, motor loss, or muscular atrophy” which
12 would prevent greater activities and that even if her daily activities were as limited as alleged, it
13 would be difficult to attribute those limitations “to her medical conditions, as opposed to other
14 reasons.” AR 40. The ALJ also found that Plaintiff’s complaints of disabling physical limitations
15 were contradicted by her ability to design nails. AR 42. Sixth, the ALJ found “no convincing
16 evidence” to support Plaintiff’s allegation that she has to be accompanied at all times by her
17 husband to manage her anxiety. AR 42. Seventh, the ALJ opined that “minimal clinical, imaging,
18 or diagnostic evidence” supported Plaintiff’s claims of panic disorder with agoraphobia,
19 depression, mental sickness, and PTSD, as well as her HIV and her body pain. AR 42. Eighth,
20 the ALJ found a contradiction in the fact that Plaintiff “had documented self-employment in the
21 past, despite her reported fifth grade education.” AR 42.

22 Additionally, the ALJ made several findings that implicitly rejected Plaintiff’s testimony
23 without actually acknowledging the conflict. For example, the ALJ repeatedly identified his belief
24 that Plaintiff could drive. AR 31, 39, 40 (“Per testimony, she had a valid driver’s license,
25 suggesting sufficient ability to drive.”); AR 40 (“She could . . . drive in her community.”). This
26 repeated observation is contrary to Plaintiff’s hearing testimony that she “really do[es] not know”
27 if she can drive a car because she “ha[s]n’t driven in a long time.” AR 52. As another example,
28 the ALJ found that Plaintiff “maintained contact with family members” and “had no problem

1 getting along with authority figures, family, friends, neighbors, or others,” AR 33, 40, contrary to
2 Plaintiff’s testimony that she does not like to go inside a grocery store, she is “afraid of
3 everything,” she cannot leave her home by herself, she has no friends that visit her, and she does
4 not visit anyone else. AR 52–55. These statements by the ALJ disregard Plaintiff’s contrary
5 testimony without any specific, clear, and convincing reason for doing so.

6 The ALJ seems to have relied on a general implicit finding that Plaintiff was holistically
7 not credible. It is error for an ALJ to “delve into wide-ranging scrutiny of the claimant’s character
8 and apparent truthfulness.” Trevizo v. Berryhill, 871 F.3d 664, 679 n.5 (9th Cir. 2017). It is also
9 error for an ALJ to dedicate “[a] large part of the [] discussion” of a plaintiff’s consistency with
10 the record to “apparent inconsistencies unrelated to her symptoms.” Martinez v. Berryhill, 721 F.
11 App’x 597, 600 (9th Cir. 2017) (unpublished). Here, the ALJ repeatedly emphasized whether
12 Plaintiff was “convincing.” AR 31, 39, 41. The ALJ focused a large part of the discussion on
13 purported inconsistencies in Plaintiff’s work history and her financial ability to access treatment,
14 and discounted aspects of her testimony without recognition or explanation.

15 In addition to focusing on overall credibility contrary to SR 16-3p, the ALJ erred because
16 he did not discount Plaintiff’s testimony for any clear or convincing reason supported by the
17 substantial evidence.

18 First, the ALJ’s conclusion that Plaintiff’s imaging and progress notes did not reveal the
19 degree of pain Plaintiff describes is not an appropriate reason to disregard her testimony, nor to
20 conclude that Plaintiff is “largely asymptomatic.” AR 29. A claimant “is *not* required to show
21 ‘that her impairment could reasonably be expected to cause the severity of the symptom she has
22 alleged; she need only show that it could reasonably have caused some degree of the symptom.’
23 Nor must a claimant produce ‘objective medical evidence of the pain or fatigue itself, or the
24 severity thereof.’” Garrison, 759 F.3d at 1014 (emphasis in original) (quoting Smolen v.
25 Chater, 80 F.3d 1273, 1282 (9th Cir. 1996)).

26 Second, the ALJ did not give a clear or convincing reason for disbelieving that Plaintiff
27 could not afford certain medical care. “Disability benefits may not be denied because of the
28 claimant’s failure to obtain treatment he cannot obtain for lack of funds.” Gamble v. Chater, 68

1 F.3d 319, 321 (9th Cir. 1995). The ALJ did not identify what “gratuitous local care” was available
2 to Plaintiff following her suicide attempt, nor did he consider whether Plaintiff is eligible to be
3 insured under the Affordable Care Act and at what price. Additionally, it is unrealistic to
4 hypothesize that insurance under the Affordable Care Act could have been available to Plaintiff
5 immediately in the context of medically responding to a suicide attempt. Moreover, even assuming
6 that affordable care alternatives exist, the ALJ did not ask Plaintiff any follow up questions when
7 Plaintiff testified as follows: “I cannot go to the hospital because I have no health insurance.” AR
8 53. Substantial evidence therefore does not support the implication by the ALJ that Plaintiff
9 willfully declined to seek treatment that she knew was available and that she could afford. The
10 ALJ also failed to explain why counseling sessions are necessarily free, and why Plaintiff’s
11 testimony that they cost \$45 per session is inferentially false, just because Plaintiff *once* paid \$0.00
12 for a *primary care* visit in June 2016. AR 35–36. A claimant’s failure to receive medical treatment
13 at times when the claimant lacks medical insurance “cannot support an adverse credibility
14 finding.” Orn v. Astrue, 495 F.3d 625, 638 (9th Cir. 2007). The ALJ proffered no clear or
15 convincing reason to disbelieve Plaintiff’s allegations of poverty and limited access to medical
16 care.

17 Third, the ALJ did not give clear or convincing reasons supported by substantial evidence
18 for finding less credible Plaintiff’s allegations of pain and mental health symptoms on the basis of
19 her sporadic noncompliance with her antiretroviral medication. AR 33, 34, 35, 42. “Where a
20 claimant provides evidence of a good reason for not taking medication for her symptoms, her
21 symptom testimony cannot be rejected for not doing so.” Smolen, 80 F.3d at 1284. Plaintiff has
22 proffered evidence that she needs reminders to take her medication, AR 182, 204, 219, and that
23 she has no health insurance, AR 53, either or both of which could explain the sporadic lapses in
24 antiretroviral medication use. However, the ALJ did not consider these explanations or ask
25 Plaintiff about her noncompliance at the hearing. Moreover, and importantly, the ALJ does not
26 explain which pain or mental health symptoms were treated by Plaintiff’s antiretroviral regimen
27 and which symptoms therefore could be inferred to be less disabling than alleged. Because there
28 is no evidence that Plaintiff’s antiretroviral medications treated any symptoms related to her pain

1 or mental health impairments, it was not appropriate for the ALJ to use this noncompliance to cast
2 doubt on Plaintiff's symptomology as a whole. See Trevizo v. Berryhill, 871 F.3d 664, 681 (9th
3 Cir. 2017) (identifying error in the ALJ's credibility assessment where the ALJ found that if the
4 plaintiff were compliant with her diabetes medication, her dizziness would improve, because no
5 treatment notes made any connection between the plaintiff's dizziness and her medication
6 noncompliance).

7 Fourth, the ALJ's suggestion that Plaintiff lied about her work history is not supported by
8 substantial evidence. The ALJ compares a record dated September 19, 2013, which states that
9 Plaintiff's panic attacks "have been more severe over the past 1 year" and that "[s]he has had to
10 stop working due to these attacks," AR 275, with the record of the consultative examination on
11 April 16, 2015, which notes that Plaintiff "last worked one year ago as a personal care provider,"
12 AR 333. First, the ALJ seemed to find that the 2013 statement was a lie or misrepresentation. AR
13 36 ("She, however, said [at the September 19, 2013 appointment] that she stopped working . . .
14 contrary to her statement to the consultative examiner [on April 16, 2015]."). But these statements
15 are not inconsistent; to the extent Plaintiff conducted some work as a personal care provider in
16 2014, she cannot have prospectively lied about that work in 2013. Second, the ALJ found that this
17 notation in the April 16, 2015 consultative examination record "suggested that [Plaintiff] worked
18 after the alleged onset of disability, despite the lack of any reported income in 2014." AR 39. But
19 it is far from clear that Plaintiff actually engaged in any work in 2014, as there are no income
20 records and no other indications in the record that would suggest that Plaintiff worked as a personal
21 care provider after 2012. However, the ALJ declined to ask any clarifying questions regarding
22 Plaintiff's work history at the hearing, and instead stated on the record that Plaintiff had not
23 engaged in substantial gainful employment since 2012, thereby giving Plaintiff no opportunity to
24 respond to this later-identified minor inconsistency. See AR 52. The Court finds that such a minor
25 discrepancy is not a reasonable basis upon which to discredit any aspect of Plaintiff's testimony,
26 particularly in light of SSR 16-3p, which instructs ALJs to focus on symptom evaluation and not
27 on a claimant's character for truthfulness.

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1 Fifth, and similarly, the ALJ's suggestion that Plaintiff lied about her activities of daily
2 living is not supported by substantial evidence. The ALJ sought "clinical evidence of muscle
3 wasting, motor loss, or muscular atrophy" in order to support Plaintiff's characterization that she
4 does not do "much of anything during the day." AR 40. The ALJ's conclusion implicitly, but not
5 clearly or convincingly, denies Plaintiff's allegations of mental health symptoms as the cause of
6 her limited activities of daily living. But pursuant to Plaintiff's testimony at the hearing, anxiety
7 is the crux of her disability and the reason she cannot work or leave the home alone. AR 52-53.
8 This level of disabling anxiety is supported by the substantial evidence. The record shows that
9 Plaintiff has been treated for ongoing nightmares, flashbacks, daily panic attacks, and insomnia
10 since September 2013. AR 275, 282, 288, 307, 346, 350, 355-63. The ALJ did not explain what
11 clinical evidence or objective verification would be required to verify that Plaintiff's anxiety
12 symptoms had as severe an impact on her activities of daily living as alleged. The ALJ also did
13 not give a clear or convincing reason for finding that Plaintiff's self-reported ability to paint her
14 own nails at home contradicted her alleged limitations in activities of daily living. "The Social
15 Security Act does not require that claimants be utterly incapacitated to be eligible for benefits, and
16 many home activities may not be easily transferable to a work environment." Smolen, 80 F.3d at
17 1284 n.7. The fact that Plaintiff's self-reported hobbies constituted only watching TV and
18 YouTube, painting her own nails, and "sometimes" walking is consistent with her testimony that
19 she suffers from anxiety symptoms that prevent her from leaving the home alone and engaging in
20 full-time work. AR 52-53, 206.

21 Sixth, Plaintiff's allegation that she must always be accompanied by her husband to
22 manage her anxiety is supported by substantial evidence. As discussed above, the medical
23 evidence documents ongoing severe mental health symptoms. The severity of these symptoms is
24 apparent; for example, records from Serenity Mental Health in February 2015 document a GAF
25 score of 37. AR 350. This GAF score is associated with "major impairment in several areas, such
26 as work or school, family relations, judgment, thinking, or mood." Global Assessment of
27 Functioning (GAF) Scale, DSM-IV-TR, at 34. The ALJ did not give a clear or convincing reason
28 to discount Plaintiff's testimony and did not explain what "convincing evidence" the ALJ would

1 have needed to believe Plaintiff's allegation as to the severity of her anxiety symptoms. AR 42.
2 Moreover, as discussed above, Plaintiff has since submitted evidence that documents in express
3 terms Plaintiff's medical need to be constantly supervised by a formal legal guardian. AR 64–65.

4 Seventh, the ALJ did not give a clear or convincing reason for requiring greater “clinical,
5 imaging, or diagnostic evidence” to support Plaintiff's “reported back pain, neck pain, all over
6 bodily pain, panic disorder with agoraphobia, depression, mental sickness, HIV, or PTSD.” AR
7 42. These types of “[g]eneral findings are insufficient; rather, the ALJ must identify what
8 testimony is not credible and what evidence undermines the claimant's complaints.” Lester, 81
9 F.3d at 834. Each of the conditions listed by the ALJ is diagnosed in the record by one or more
10 medical professionals. Each condition would be associated with different types of clinical,
11 imaging, or diagnostic evidence. The ALJ failed to specifically identify what evidence in the
12 record was lacking that would be necessary in order for the medical record to be found consistent
13 with Plaintiff's allegations. Moreover, as discussed above, because the ALJ found that Plaintiff's
14 impairments could reasonably be expected to cause some degree of symptoms, AR 42, Plaintiff
15 was “*not* required to show” objective medical evidence to substantiate the severity of her
16 symptoms. Garrison, 759 F.3d at 1014 (emphasis in original).

17 Eighth, the ALJ's suggestion that Plaintiff lied about either her work history or her
18 educational history is not supported by substantial evidence. AR 42 (“She had documented self-
19 employment in the past, despite her reported fifth grade education.”). At the hearing, the ALJ
20 established that Plaintiff ceased attending school in approximately the fifth grade and that she
21 worked as a self-employed house cleaner in 2004 and 2005. AR 52. Performance of this unskilled
22 job is not inconsistent with Plaintiff's reported educational history. Plaintiff does not contend that
23 her fifth-grade education prevents her from working. Moreover, the ALJ found that Plaintiff had
24 the RFC to *continue* her past relevant work as a house cleaner, AR 43, despite her reported
25 educational background. This statement, like several others discussed above, highlights the ALJ's
26 general suspicion of Plaintiff's honesty in violation of SSR 16-3p.

27 The Court finds that the ALJ's disbelief of Plaintiff's testimony was not harmless. The
28 ALJ stated that the inconsistencies identified in Plaintiff's testimony and representations are what

1 “tipped the scale towards a finding that she was not disabled.” AR 42. As discussed below, if
2 Plaintiff’s testimony were credited, Plaintiff would necessarily be found disabled.

3 **C. Remand for Benefits**

4 The Ninth Circuit has established that where no outstanding issues need be resolved, and
5 where the ALJ would be required to award benefits on the basis of the record if the improperly
6 discredited evidence were credited as true, the Court will remand for an award of benefits. See
7 Varney v. Sec’y of Health & Human Servs., 859 F.2d 1396, 1401 (9th Cir. 1988). The Circuit has
8 devised a three-part credit-as-true standard, each part of which must be satisfied in order for a court
9 to remand to an ALJ with instructions to calculate and award benefits:

- 10 (1) the record has been fully developed and further administrative proceedings
11 would serve no useful purpose;
- 12 (2) the ALJ has failed to provide legally sufficient reasons for rejecting evidence,
whether claimant testimony or medical opinion; and
- 13 (3) if the improperly discredited evidence were credited as true, the ALJ would be
required to find the claimant disabled on remand.

14 Garrison, 759 F.3d at 1020 (9th Cir. 2014).

15 First, the Court finds that the record has been fully developed and that further
16 administrative proceedings would serve no useful purpose. Next, for the reasons discussed above,
17 the ALJ failed to provide legally sufficient reasons to rejecting Plaintiff’s testimony. Lastly, it is
18 apparent that if the improperly discredited evidence were credited as true, the ALJ would be
19 required to find Plaintiff disabled on remand. The vocational expert testified that there is no work
20 a person could perform if she would miss two or more days of work a month. AR 56. Plaintiff
21 testified that her anxiety symptoms have become so severe that she cannot leave her house without
22 her husband, and that her husband has had to cease working to take care of her full-time. AR 53.
23 While these allegations are supported by substantial evidence in the record before the ALJ, they
24 are more directly corroborated by the July 7, 2016 evidence submitted after the hearing, verifying
25 that Plaintiff has a medical need for constant supervision and formal legal guardianship under
26 Nevada law. AR 64–65. Plaintiff plainly could not attend work with fewer than two absences per
27 month if she cannot leave her home and has a medical need for constant supervision. Therefore,
28

1 the Court finds that the record directs a finding that Plaintiff is disabled and remands for an award
2 of benefits.

3
4 **V. CONCLUSION**

5 **IT IS HEREBY ORDERED** that Plaintiff Blanca M. Hernandez-Aguirre's Motion for
6 Remand (ECF No. 18) is GRANTED and Defendant's Nancy A. Berryhill's Cross-Motion to
7 Affirm (ECF No. 21) is DENIED.

8 **IT IS FURTHER ORDERED** that this matter is remanded to Defendant Nancy A.
9 Berryhill, Acting Commissioner of Social Security, for an award of benefits.

10 **IT IS FURTHER ORDERED** that the Clerk of the Court shall enter a final judgment in
11 favor of Plaintiff, and against Defendant. The Clerk of Court is instructed to close the case.

12
13 **DATED:** September 6, 2019.

14 

15 **RICHARD F. BOULWARE, II**
16 **UNITED STATES DISTRICT JUDGE**